

No. 12,368

IN THE

**United States Court of Appeals
For the Ninth Circuit**

CLARK SQUIRE, United States Collector
of Internal Revenue for the State of
Washington,

Appellant,

vs.

PUGET SOUND PULP & TIMBER Co.,

Appellee.

Appeal from the United States District Court for the
Western District of Washington, Northern Division.

APPELLEE'S PETITION FOR A REHEARING.

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*To the Honorable William Denman, Presiding Judge,
and to the Honorable Associate Judges of the
United States Court of Appeals for the Ninth
Circuit:*

Comes now the Puget Sound Pulp & Timber Co., by its attorney, the appellee in the above entitled proceeding in which judgment was rendered by this Court on April 28, 1950, reversing the judgment of the District Court, and presents its petition for rehearing of the above entitled cause, and in support thereof respectfully shows:

I.

That the conclusion of this Honorable Court that the "date prescribed for payment of the tax", as that term is used in Section 292(a) of the Internal Revenue Code, refers to the date generally prescribed for the payment of taxes, and not to the date prescribed for the payment of taxes the payment of which was deferred under Section 710(a)(5) of the Internal Revenue Code, and which is the subject of the deficiency on which the interest was charged, is not in accord with the meaning of those statutes as appellee believes they were construed by the United States Supreme Court in its decision in the recent case of *Manning v. Seeley Tube & Box Co.*, 70 S. Ct. 386, decided February 6, 1950 after the briefs in this case had been filed, and is therefore in error.

II.

That the conclusion of this Honorable Court that, "The underlying purpose of these sections" (Sections 292(a), 722 and 710(a)(5)) "reflects a legislative intent to treat a deferred amount, which is later determined to be owing, just as if it had been owing from the date the tax became due," is in conflict with the specific provisions of Section 710(a)(5) that the deferred tax is not payable at the time the balance of the tax was payable, and in conflict with the inference in the Supreme Court's decision in the *Seeley Tube & Box Co.* case, *supra*, that if a tax is deferred, interest does not start to run until it becomes due and payable at some time later than the due date of the tax return, and therefore the Court's conclusion is in error.

III.

That the Court's basis for construing the legislative intent with respect to the assessment of interest on a deferred tax is not consistent with the discussion contained in the Supreme Court's decision in the *Seeley Tube & Box Co.* case, *supra*, and though seemingly leading to a practical reasonable result in this instance, will lead to an injustice in other instances, possibly in this very case if this taxpayer should be successful in the further prosecution of its claims for relief under Section 722, and is therefore in error.

IV.

That the Court's conclusion is based upon an interpretation of the statutes which appellee believes is in conflict with the express and unambiguous provisions of the statute, and in conflict with the well established rule of statutory construction that Internal Revenue statutes should not be extended beyond the clear import of the language used and in case of doubt are to be construed most strongly against the Government, and in favor of the citizen, and the Court's conclusion is therefore in error.

STATEMENT IN SUPPORT OF FOREGOING GROUNDS.

INTRODUCTION.

The *Seeley Tube & Box Co.* decision was rendered February 6, 1950, after the briefs were filed in this proceeding so no reference to that decision is contained in the briefs. The Government made no men-

tion of the case in its argument before the Court, and appellee, in its reliance upon what it thought was clearly contained in the applicable statutory provisions, did not consider the said decision as applicable to this case. However, in view of this Court's analysis and interpretation of those statutes leading to conclusions not advanced by the Government and therefore not heretofore discussed by appellee, and which conclusions appellee believes to be contrary to expressions contained in said Supreme Court decision, appellee files this petition to call this decision to the attention of the Court and to point out wherein it is believed the Court's conclusions are in conflict with that decision and are otherwise in error.

GROUNDS I AND II.

In the *Seeley Tube & Box Co.* case a taxpayer made certain errors in its 1941 tax return which when corrected resulted in an additional tax which was assessed as a deficiency and collected together with interest thereon. In its 1943 tax return the taxpayer disclosed a net loss which when carried back as a deduction for 1941 resulted in a tax refund for that year. The Government refunded the tax but refused to refund the interest which was collected when the deficiency was collected.

The taxpayer sued for the interest. The District Court found for the Government but the Circuit Court reversed on the ground that the result of the

loss carry back was to wipe out the debt for the tax deficiency, and since there was no debt there could be no interest because interest was assessable only on a debt. The Supreme Court reversed. The income tax statute specifically provided that no interest should be allowed on a refund resulting from a loss carry-back and the Congressional reports on the statute clearly provided that the statute did not permit a deferral of the tax but required *the taxpayer to first pay his tax* without regard to such loss deduction and then file claim for refund of any overpayment due to the loss carry-back, and because of these provisions the Supreme Court held that the taxpayer must pay the correct tax when due upon filing of the return, and if there is an understatement of that tax the taxpayer must pay interest on that understatement, even though there might be a refund later due to a loss carry-back with respect to which refund however the statute specifically provides that it shall be refunded without interest.

In reaching its conclusion, the Supreme Court first described the general statutory scheme for reporting and collecting of the tax. It pointed out that the tax which is due upon the filing of the return, is the correct tax due for that year, and if there is an understatement of tax on the return such understatement is assessable as a deficiency and "interest upon this deficiency at the rate of 6 per cent from the date the tax was lawfully due to the date of the assessment is assessed at the same time as the deficiency." The Supreme Court emphasized that "from the date the orig-

inal return was to be filed until the date the deficiency was actually assessed, the taxpayer had a positive obligation to the United States; a duty to pay its tax. * * *” and “For that period the taxpayer, by its failure to pay the taxes owed, had the use of funds which rightfully should have been in the possession of the United States. * * *” and “A taxpayer who files a timely return but does not pay the tax *on time* must pay the interest on the tax until payment. * * *” (Italics ours) and “When the Commissioner assesses a deficiency he also may assess interest on that deficiency from the date the tax was due to the assessment date.” Since under this analysis, interest was chargeable from the time the tax was due and payable, the Supreme Court then proceeded to point out that the tax deficiency assessed against the Seeley Tube & Box Co. was due and payable when the return for 1941 was filed and that the statute did not defer or delay the prompt payment of taxes properly due.

The Supreme Court pointed out that when Congress allowed the carry-back deductions, “there is no indication that Congress intended to encourage taxpayers to cease prompt payment of taxes,” and, quoting from a Senate Report, the taxpayer “must therefore file his return and pay his tax without regard to such deduction, and must file his claim for refund at the close of the succeeding taxable year when he is able to determine the amount of such carry-back,” from which report the Court concluded, “we can imagine no clearer indication of a Congressional understanding and intent that the carry-back was not to be inter-

interpreted as deferring or delaying the prompt payment of taxes properly due" (italics ours), and that the carry-back provision did not "retroactively alter the duty of a taxpayer to pay his full tax promptly," which conclusion, the Supreme Court said, was amply supported by Section 3771(e) of the Code which specifically provides that no interest is to be paid on refunds resulting from the application of the carry-back.

It is appellee's conclusion from the reading of this case that interest on a deficiency starts from the date the tax is due and payable, and that the due and payable date is the filing date for the return *unless the statute allows a deferment or delay for payment*, in which event the due and payable date would be the date when a "positive obligation to the United States" to pay the tax first arose. In this very case, had the Government tried to collect the deferred tax before first rejecting the appellee's claim for relief, the appellee could have resisted the claim without difficulty *on the ground that the tax was not due and that it had no obligation to the United States to pay this tax until after rejection of its relief claim. (California Vegetable Concentrates, Inc., 1948, 10 T. C. 1158.)* There is certainly no doubt that Section 710(a)(5) gives specific permission to defer payment of part of the tax and there is nothing in the statute anywhere which says or infers that the tax so deferred is to be considered at any time as due or payable at the time the return is filed.

It is respectfully submitted that this Honorable Court erred in concluding that the deferred tax, if later determined to be owing, should be treated as if it had been owing from the time the return was filed, and interest should start to run from that date, first because Section 710(a)(5) specifically provides that such tax is not due or payable on that date, and secondly because the date upon which interest is to start must be a date "prescribed for payment" (Section 292(a)) of the tax which is being assessed as a deficiency, and the return date is not the date prescribed for payment of the deferred tax. The fact that the Supreme Court took care to analyze the statutes and legislative history of the carry-back provisions to establish that no deferment or delay for payment of a tax deficiency which might be affected by a carry-back was allowable under the statute, and the general expressions of the Court throughout the opinion that interest was chargeable on the tax deficiency from the time it was lawfully due, is clear indication that the Court was of the opinion that if the tax deficiency had not been due or payable on the filing date of the return, no interest could have been collectible from that date to the date when the tax first became due and payable.

It is most incongruous to conclude, as this Court did, that in determining interest on a certain tax, which interest must start to run from "the date prescribed for payment of the tax," reference must be made to the date prescribed for payment of another tax, especially when the statute is specific that the

date prescribed for payment of the other tax is not the date prescribed for payment of the particular tax in question. It seems clear from the context of the entire Section 292(a), that the use of the term "tax" in the phrase "date prescribed for the payment of the tax" is intended to distinguish between the tax which is the subject of the deficiency, and the "deficiency" as such because the deficiency which would include tax, interest and penalty if any, and is payable upon notice and demand from the Collector, whereas the tax which is the subject of the deficiency may have been due and payable on some other date. The tax which may be the subject of a deficiency under Section 292(a) could be a tax against a corporation, or against an individual, or against a decedent, or against an estate or a fiduciary, or a personal holding company, or a tax which was deferred under Section 710(a)(5) which is given separate recognition in Section 292(b), all of which taxes may have different due dates, so the "date prescribed for the payment of the tax" as that term is used in Section 292(a) must necessarily refer to the date prescribed for the payment of the tax which is the subject of, or the tax part of, the deficiency.

It is respectfully submitted that for the reasons hereinabove stated, the Court erred in concluding that even though the date of payment of a tax is specifically delayed or deferred by a statutory provision, interest is chargeable upon that tax if it is later assessed from a date it would have been payable had the payment date not been deferred by the statute.

GROUNDS III AND IV.

This Court seemed concerned that unless interest was charged in cases such as this, some taxpayers would enjoy an unfair advantage over others or over the Government. The Court may have overlooked the fact that Congress, by enactment of Section 710(a) (5) has earmarked a certain class of taxpayers for favored treatment by granting to them the right to defer payment of part of their tax. Every taxpayer in that designated class was given the same right to enjoy such favored treatment, but no other taxpayer had the right to defer payment of its tax. When Congress enacted Section 710(a)(5) by Section 222(b) of the Revenue Act of 1942, it was thinking of extending relief to taxpayers. In the early part of its report, paragraph "8" of Part "II", the House Ways and Means Committee discussed the need for "removing certain inequities and alleviating hardships" from the "unfair application of the excess-profits tax in abnormal cases", and in the latter part of its report relating to "Section 213, Relief Provisions" it stated (p. 148, Report No. 2333, 77th Congress, 2d Session, relating to H.R. 7378):

"Deferment of Tax.—Although it is believed advisable to require a taxpayer seeking relief under section 722 to compute and pay its tax without the benefit of such section, there are some cases in which it would be inequitable to compel the taxpayer to pay the entire amount of such tax. Section 710(a) is therefore amended to provide that if the adjusted excess profits net income (computed without the benefit of sec. 722) for any taxable year in which the taxpayer claims

relief under such section is in excess of 50 percent of the normal tax net income for such year (computed without the credit for adjusted excess-profits net income) the amount of the tax payable at the time required for payment may be reduced by an amount equal to 33 percent of the reduction claimed in the tax. Thus, at the time required for payment, an eligible taxpayer need pay only 67 percent of that portion of the tax from which it claims relief. Any reduction in tax determined under section 722 in excess of the amount deferred by the taxpayer will have the effect of producing an overpayment of tax. Any determination of tax greater than the total amount paid will produce a deficiency.”

Prior to the Revenue Act of 1942, Section 722(e) read:

“Application for Relief Under This Section.—The taxpayer shall compute its tax and file its return under this subchapter without the application of this section * * *.”

Section 222(a) of the Revenue Act of 1942 amended this subsection by changing it to Section 722(d), reading as follows:

“Application for Relief Under This Section.—The taxpayer shall compute its tax, file its return, *and pay its tax* under this subchapter without the application of this section, *except as provided in Section 710(a)(5) * * *.*” (Amendments in *italics*.)

and Section 222(b) of the Revenue Act of 1942 added Section 710(a)(5) to the Internal Revenue Code. It

is obvious that the enactment of Section 710(a)(5) was intended as an extension of relief to taxpayers eligible therefor. Since this relief was not conditioned upon ultimate liability for the deferred tax, it seems inconsistent to conclude that Congress, while granting relief on the one hand, intended on the other hand to impose an interest burden in the event the deferred tax became due and payable at a later date. Since Congress allowed this deferment of tax as a measure of relief, it is but a logical consequence that this relief should extend to a deferment of the starting date for interest in the event this deferred tax is later found to be due.

This Court also seemed concerned that a limitation on interest would encourage frivolous claims. (The excess profits tax was repealed in 1945 so the question here involved could relate only to taxes for the years 1942 to 1945.) The Government certainly would have no trouble collecting interest where frivolous claims were filed (*Busser v. U. S.*, C.C.A. 3, 1942, 130 F. (2d) 537) and as to this case the District Court found as a fact that appellee's claim was not frivolous but "was a bona fide claim made in good faith" and "plaintiff believed and under the evidence had the right in all honesty to believe that plaintiff was entitled to the relief it claimed" (R. 86).

This Court stated that in its opinion, Section 292(b) by specifying that September 16, 1945 was not to be the starting date for interest on a deferred tax later found to be due, indicated a legislative intent that the

starting date was to be the filing date of the return. With all due respect to this Court, if it is recognized that Congress intended to favor certain taxpayers by permitting them to defer payment of a tax until some later due date, would it not be more consistent that the purpose of the exclusion in Section 292(b) was to permit the interest to start not from September 16, 1945 but from the date the deferred payment might become due and payable whatever date that might be? There is no legal, logical or practical reason why a taxpayer should owe interest to the Government on a tax for a period prior to the time the tax became due and payable and the taxpayer's obligation to the United States became fixed. The exclusion in Section 292(b) may have been inserted for that very reason—that is to allow interest to start when the obligation for the tax arose rather than to have it start on September 16, 1945, which would be a date without any practical, legal, or logical relation to the time this tax might become due and payable. As observed by this Court, Section 292(b) makes no affirmative provision as to payment of interest on deferred amounts.

It might have appeared to this Court too, that an injustice might be done if no charge were made for interest on this deferred tax. Aside from the fact that Congress deliberately bestowed discriminatory benefits upon a class of taxpayers of which appellee is one, it is practically impossible to prescribe a single rule which would prevent discrimination in every situation regardless of whether interest is or is not held to

be assessable on this deferred tax. For instance, in this very case appellee is prosecuting its Section 722 claim and is preparing to go to trial in an appeal from the Commissioner's action in rejecting the claim. If the appellee should prevail and be entitled to relief in the amount equal to the deferred tax, it will obtain a refund of that tax but as this Court observed, it will get no interest thereon because Section 3771(g) prohibits the payment of interest on refunds resulting from relief under Section 722. It is obvious then that in such event the decision of this Court in this case would be most unjust because it would validate the taking of some \$11,000.00 of interest which appellee would not have had to pay had it not been for the premature action of the Commissioner in assessing the deferred tax, after his rejection of the claim. A taxpayer in a similar situation but against whom the Commissioner had not assessed the deferred tax would pay no interest. It is because of this impossibility of covering every possible situation against some sort of discrimination, that the statutory provisions for the due date for payment of the tax, and for the levy of interest, have to be accepted as a "rule of thumb" to be strictly applied according to their terms, let the results fall where they may. This is evident from the latter part of the Supreme Court's decision in the *Seeley Tube & Box Co.* case in which the Court refused to say whether its decision would have been different if the Commissioner had followed a different administrative procedure and had netted the carry back deduction against other adjustments before de-

termining a deficiency and had assessed merely the net deficiency.

The Supreme Court allowed interest because it was charged on a deficiency *involving a tax which was due* when the return was filed, whereas in this case the deficiency *involves a tax which was not due* when the return was filed. If the appellee correctly understands the *Seeley Tube & Box Co.* decision, the Supreme Court concluded therein that interest is chargeable upon a tax deficiency from the time the tax, which is the subject of the deficiency, becomes due and payable, and that *unless* payment of that tax is deferred or delayed by the statute, it is due and payable when the tax return is filed. In this case the statute, Section 710(a)(5), specifically provides that the payment of the tax which is the subject of the deficiency upon which the interest was assessed, was to be deferred until some date beyond the tax return date and the only other date that could be considered as the date prescribed by the statute as the due and payable date for this deferred tax is the payable date for the deficiency which is the date of the collector's notice and demand for payment. This Court's conclusion to the effect that the deferment under Section 710(a)(5) is to be ignored if the deferred tax is assessed, and that interest is to be charged thereon from the due date of the return as the due and payable date of this deferred tax, is in violation of the well established rule that "In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear im-

port of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the Government, and in favor of the citizen." (*Gould v. Gould*, 1918, 38 S. Ct. 53, 245 U. S. 151; *U. S. v. Updike*, 1930, 281 U. S. 489, 50 S. Ct. 367.)

It is respectfully submitted that the starting of interest from the date the deferred tax first became a definite obligation of the taxpayer to the United States, is not inconsistent with the general scheme of the taxing statutes for the assessment and collection of taxes, deficiencies, and interest thereon, and that under the *Seeley Tube & Box Co.* case there is recognition of the possibility that the date of payment of a tax may be delayed or deferred by statute and if such date is deferred interest shall not start to run until the date the tax, the payment of which has been deferred, becomes due and payable, and the Court's conclusion to the effect that for the purpose of computing the interest, the deferment allowed by statute should in effect be ignored, is in error.

STATUTES.

For the convenience of the Court, the applicable statutory provisions are reprinted in the Appendix hereto.

CONCLUSION.

It is respectfully urged that the statutory provisions for computing tax assessments and interest charges constitute "rule of thumb" provisions which must be strictly construed according to their terms, and that under these provisions the only date prescribed for payment of the deferred tax is the date of notice and demand from the Collector and since interest is not to start except from the date prescribed for payment of the deferred tax, it cannot start to run earlier than September 30, 1944, the date of the Collector's notice and demand for payment.

Wherefore, appellee respectfully requests that this Court grant this petition for rehearing of this case in the light of the representations herein contained, to the end that in the event this Court's decision was rendered without consideration of the arguments herein submitted which appellee had no opportunity to present heretofore, as herein explained, this Court's opinion may be changed and the District Court's judgment may be affirmed.

Dated, San Francisco, California,
May 15, 1950.

GEORGE H. KOSTER,
*Counsel for Appellee
and Petitioner.*

CERTIFICATE OF COUNSEL

I, George H. Koster, counsel for the above named appellee, do hereby certify that the foregoing Petition for Rehearing is not presented for the purpose of delay or vexation, but is, in my opinion, well founded in law and proper to be filed herein.

Dated, San Francisco, California,
May 15, 1950.

GEORGE H. KOSTER,
*Counsel for Appellee
and Petitioner.*

(Appendix Follows.)

1920-1921. (Continued)

1920-1921. (Continued)

1920-1921. (Continued)

1920-1921. (Continued)

1920-1921. (Continued)

1920-1921. (Continued)

Appendix

SEC. 729. LAWS APPLICABLE

(a) **GENERAL RULE.** All provisions of law (including penalties) applicable in respect of the taxes imposed by Chapter 1, shall, insofar as not inconsistent with this subchapter, be applicable in respect of the tax imposed by this subchapter.

SEC. 53. TIME AND PLACE FOR FILING RETURNS

(a) **TIME FOR FILING—**

(1) **GENERAL RULE.** Returns made on the basis of the calendar year shall be made on or before the 15th day of March following the close of the calendar year. Returns made on the basis of a fiscal year shall be made on or before the 15th day of the third month following the close of the fiscal year.

SEC. 56. PAYMENT OF TAX

(a) **TIME OF PAYMENT.** The total amount of tax imposed by this chapter shall be paid on the fifteenth day of March following the close of the calendar year, or, if the return should be made on the basis of a fiscal year, then on the fifteenth day of the third month following the close of the fiscal year.

(b) **INSTALLMENT PAYMENTS.** Except in the case of an individual (other than an estate or trust and other than a nonresident alien with respect to whose wages, as defined in section 1621(a), withholding under Subchapter D of Chapter 9 is not made applicable), the taxpayer may elect to pay the tax in

four equal installments, in which case the first installment shall be paid on the date prescribed for the payment of the tax by the taxpayer, the second installment shall be paid on the fifteenth day of the third month, the third installment on the fifteenth day of the ninth month, after such date. If any installment is not paid on or before the date fixed for its payment, the whole amount of the tax unpaid shall be paid upon notice and demand from the collector.

SEC. 710(a)(5). DEFERMENT OF PAYMENT IN CASE OF ABNORMALITY

If the adjusted excess profits net income (computed without reference to section 722) for the taxable year of a taxpayer which claims on its return, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, the benefits of section 722, is in excess of 50 per centum of its normal tax net income for such year, computed without the credit provided in section 26(e) (relating to adjusted excess profits net income) the amount of tax payable at the time prescribed for payment may be reduced by an amount equal to 33 per centum of the amount of the reduction in the tax so claimed. For the purposes of section 271, if the tax payable is the tax so reduced, the tax so reduced shall be considered the amount shown on the return.

SEC. 271(a) DEFINITION OF DEFICIENCY

IN GENERAL. As used in this chapter in respect of a tax imposed by this chapter, "deficiency" means

the amount by which the tax imposed by this chapter exceeds the excess of—

- (1) the sum of (A) the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus (B) the amounts previously assessed (or collected without assessment) as a deficiency, over * * *
- (2) the amount of rebates, as defined in subsection (b)(2), made.

SEC. 271(b) RULES FOR APPLICATION OF SUBSECTION
(a)

For the purposes of this section—

- (1) The tax imposed by this chapter and the tax shown on the return shall both be determined without regard to payments on account of estimated tax, without regard to the credit under section 35, and without regard to so much of the credit under section 32 as exceeds 2 per centum of the interest on obligations described in section 143(a);
- (2) The term “rebate” means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed by this chapter was less than the excess of the amount specified in subsection (a)(1) over the amount of rebates previously made; and

(3) The computation by the collector, pursuant to section 51(f), of the tax imposed by this chapter shall be considered as having been made by the taxpayer and the tax so computed considered as shown by the taxpayer upon his return.

SEC. 272. PROCEDURE IN GENERAL

(b) **COLLECTION OF DEFICIENCY FOUND BY BOARD.** If the taxpayer files a petition with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the decision of the Board which has become final shall be assessed or be collected by distraint or by proceeding in court with or without assessment.

(c) **FAILURE TO FILE PETITION.** If the taxpayer does not file a petition with the Board within the time prescribed in subsection (a) of this section, the deficiency, notice of which has been mailed to the taxpayer, shall be assessed, and shall be paid upon notice and demand from the collector.

SEC. 292. INTEREST ON DEFICIENCIES

(a) **GENERAL RULE.** Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected

as a part of the tax, at the rate of 6 per centum per annum from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed, or, in the case of a waiver under section 272(d), to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier. If any portion of the deficiency assessed is not to be collected by reason of a prior satisfaction, in whole or in part, of the tax, proper adjustment shall be made with respect to the interest on such portion.

(b) DEFICIENCY RESULTING FROM RELIEF UNDER SECTION 722. If any part of a deficiency for a taxable year beginning prior to January 1, 1942, is determined by the Commissioner to be attributable to the final determination of an application for relief or benefit under section 722 for any taxable year, no interest shall be assessed or paid with respect to such part of the deficiency. If any part of a deficiency for a taxable year beginning after December 31, 1941, is determined by the Commissioner to be attributable to the final determination of an application for relief or benefit under section 722 for any taxable year (excluding any portion of a deficiency of excess profits taxes constituting a deficiency by reason of deferment of tax under section 710(a)(5), and excluding, in case the taxpayer has availed itself of the benefits of section 710(a)(5), such portion of a deficiency under Chapter 1 as may be determined by the Commissioner to exceed any refund or credit of

excess profits tax arising from the operation of section 722), no interest shall be assessed or paid with respect to such part of the deficiency for any period prior to one year after the filing of such application, or September 16, 1945, whichever is the later.

SEC. 3771. INTEREST ON OVERPAYMENTS

(g) CLAIMS BASED UPON RELIEF UNDER SECTION 722. If any part of an overpayment for a taxable year beginning prior to January 1, 1942, is determined by the Commissioner to be attributable to the final determination of an application for relief or benefit under section 722 for any taxable year, no interest shall be allowed or paid with respect to such part of the overpayment. If any part of an overpayment for a taxable year beginning after December 31, 1941, is determined by the Commissioner to be attributable to the final determination of an application for relief or benefit under section 722 for any taxable year, no interest shall be allowed or paid with respect to such part of the overpayment for any period prior to one year after the filing of such application, or September 16, 1945, whichever is the later.